

Application No.: 10/644,426

Docket No.: 60680-1638

**REMARKS**

Applicant has carefully reviewed the Office Action mailed October 6, 2005. In response to the office action, Applicant has amended claims 1, 4, 6, 14, and 20, and cancelled claim 3. By way of this amendment, no new matter has been added. Accordingly, claims 1-2, 4-8, 11, and 14-23 remain pending in this application. Applicant respectfully requests reconsideration of the present application in view of the following remarks.

**Claim Amendments**

Independent Claim 1 has been amended to further define the tubular members. Support for this amendment can be found, at least, in FIGS. 1 and 2.

Independent claims 14 and 20 has been amended to define at least part of the relationship between the lip (previously described in claims 6 and 14) and the tubular portion. Support for these amendments can be found, at least, in paragraph [0017] and FIGS. 1, 4, and 5.

**Claim Rejections – 35 U.S.C. § 103**

Claims 1-7, 11, 14-18, and 20-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Stephenson et al.* in view of *Peterson*. Applicant respectfully traverses the rejection.

Claims 8, 19, 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Stephenson*, as modified, in view of *Schmidt* (U.S. Patent No. 3,390,709). For at least the following reasons, Applicant respectfully traverses the rejection

MPEP Section 2143 sets forth the basic requirements for the Patent and Trademark Office to establish prima facie obviousness as follows: "To establish a prima facie case of obviousness, three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations."

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"To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j).

Where claimed subject matter has been rejected as obvious in view of a combination of prior art references, a proper analysis under § 103 requires, inter alia, consideration of two factors: (1) whether the prior art would have suggested to those of ordinary skill in the art that they should make the claimed composition or device, or carry out the claimed process; and (2) whether the prior art would also have revealed that in so making or carrying out, those of ordinary skill would have a reasonable expectation of success. See *In re Dow Chemical Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988). Both the suggestion and the reasonable expectation of success must be founded in the prior art, not in the applicant's disclosure.

*In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991).

The Examiner has combined the bracket 14, the first layer 16, the second layer 17, the washer 20 of FIG. 3 of Stephenson with the "first and second tubular member construction (12, 14)" of Peterson to cobble together the assembly of independent claims 1, 14, and 20.

Independent claim 1, as amended positively recites "said second tubular member and said first tubular member, when in a fully installed position, may be rotated relative one another." In contrast, the "first and second tubular member construction" of Peterson requires that the tubular members couple to prevent rotation between.

Independent claim 14 positively recites "an upper base including a lip and an integral tubular member." In contrast, the Examiner's combination, using a "upper base" from Stephenson and a "tubular member" from Peterson fails to teach these components as integral members.

Independent claim 20, as amended positively recites "said second tubular member is interposed within said first tubular member with no other portions of said assembly interposed between said first tubular member and said second tubular member." In contrast, the "first and second tubular member construction" of Peterson requires a spring element 100 interposed therebetween.

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Thus, the combination of Stephenson and Peterson do not teach every limitation of independent claims 1, 14, and 20, as required in *In re Vaack*.

### Dependent Claims

Dependent claims 2-5, 7, 11, 15-18, and 21-22 teach independently patentable subject matter, although they are also patentable merely by being dependent on an allowable base claim.

### CONCLUSION

In view of the above amendment and remarks, the pending application is in condition for allowance. If, however, there are any outstanding issues that can be resolved by telephone conference, the Examiner is earnestly encouraged to telephone the undersigned representative.

It is believed no fees are due with this response. However, if any fees are required in connection with the filing of this paper that are not identified in any accompanying transmittal, permission is given to charge our Deposit Account No. 18-0013, under Order No. 60680-1638 from which the undersigned is authorized to draw.

Dated: December 6, 2005

Respectfully submitted,

By 

Michael B. Stewart

Registration No.: 36,018

Kenneth W. Jarrell

Registration No.: 52,484

RADER, FISHMAN & GRAUER PLLC

39533 Woodward Avenue

Suite 140

Bloomfield Hills, Michigan 48304

(248) 594-0633

Attorneys for Applicant